

## **REMARKS/ARGUMENTS**

### **Status of Claims**

Claims 1, 4-6 and 9-17 are now canceled. Claims 18-35 have been added via this Amendment. Claim 18 replaces claim 1. Claim 30 replaces claim 6. Claims 2, 3, 7, 8 and 18-35, are pending in this application. The new and amended claims are fully supported in the specification as originally filed, at, for example, paragraphs 58, 61, 65, 66, 141-144, in Figures 29-31, and previously presented claims, as well as elsewhere throughout the application. Applicants respectfully submit that no new matter is added via this Amendment.

### **Rejections**

Claims 1-3, 11, 13 and 14 were rejected under 35 U.S.C. 103(a) as being unpatentable over Suda US 5,078,710 (hereinafter “Suda”), in view of Langdon et al., US 5,500,270 (“Langdon”). Claims 6-8, 12 and 15-17 were rejected under 35 U.S.C. 102(b) as being anticipated by Suda. Claim 10 was rejected under 35 U.S.C. 103(a) as being unpatentable over Langdon.

Claims 1, 6, and 10-17 have been canceled via this Amendment, thereby rendering the rejections thereof moot. Applicants have amended the claims in order to more clearly claim the invention. Notwithstanding this Amendment, Applicants respectfully submit that claims pending in the application prior to this Amendment were patentable over Suda and/or Langdon under 35 U.S.C. 102(b) or 103(a), taken separately or in combination. Applicants respectfully submit that pending claims are neither anticipated by nor obvious over Suda or Langdon, taken alone or in combination.

As set forth in new claim 18, the claimed two layer structure for use in absorbent articles comprises a fluid permeable first layer and a fluid permeable second layer in fluid communication with the first layer. The fluid permeable second layer comprises a first surface directed toward the first layer and comprising a plurality of spaced apart, disconnected macrofeatures separated by and projecting above lower regions of the first surface located outside of the macrofeatures. The uppermost portions of the macrofeatures projecting above the lower regions define a first plane that is above the lower regions of the first surface.

The second layer also comprises a second surface opposite the first surface. The second surface comprises a plurality of apertures defined by aperture sidewalls that extend generally in the direction of the second surface, that is, away from the first surface of the second layer. The lowermost extending sidewalls of the apertures, that is, those apertures extending furthest from the second surface, terminate in and define a second plane that is below the second surface. The first and second planes define a caliper of the two layer structure.

As discussed in the specification and as depicted in Figures 30 and 31, the first layer contacts the second layer in the first plane, i.e. at the uppermost portions of the macrofeatures, and further is in substantial surface to surface contact with the second layer in lower regions of the first surface that are located outside of the areas contained within the macrofeatures.

In dependent claims, the second layer may be either a film or a nonwoven, and may include apertures in the macrofeatures. The second or the first fluid permeable layers may contact the body, depending on the particular contemplated use. Apertures may originate in the first surface of the second layer and project through and extend from the second surface of the second layer, or they may originate in an intermediate plane of the second layer and extend from the second surface. In addition, visual design elements are provided by additional pluralities of macrofeatures.

In absorbent articles as claimed in new claim 30, absorbent articles include an absorbent core in fluid communication with a two layer structure substantially as set forth in claim 18. The absorbent core may be in fluid communication with the second surface of the two layer structure. In addition, visual design elements are provided in such articles by additional pluralities of macrofeatures.

Suda purports to disclose a surface material for sanitary articles. Col. 6, line 44. The surface material comprises a film and a layer of fibrous aggregates, lined on the film. Col. 2, lines 24-26. The film has wall sections which have slanting portions. Col. 3, lines 17-19 and FIG. 1. At least a part of the slanting portion is provided with an opening. Col. 3, lines 18-20 and FIG. 1. The opening may be formed over a slanted part of a wall section. Col. 4, lines 66-68. Suda does not disclose, either explicitly or inherently, a fluid permeable layer that includes both macrofeatures extending above a lower region of a first surface and terminating in a first plane above the lower region of the first surface, and apertures extending, i.e. projecting, below an

opposing surface of the layer and terminating in a second plane below the second surface, thus forming a three-dimensional structure having a caliper defined by the first and second plains. Rather, Suda discloses a structure extending below a surface of an article, which structure is closed at the bottom and includes openings in the sidewalls of the structure. This is not the same as Applicants' claimed structure. Furthermore, Applicants respectfully submit that there is no suggestion in Suda that would motivate one skilled in the art to modify Suda by incorporating additional features, e.g. apertures, extending from an opposing surface of the articles of Suda, so as to define a second plane. Suda further fails to disclose a structure where a first layer contacts a second layer in a first plane, which plane is disposed above and separated from a surface and which is formed by uppermost portions of macrofeatures, in addition to being in surface to surface contact with the second layer in areas of the surface that are below the first plane and that fall outside of the areas defined by the macrofeature. Accordingly, Applicants respectfully submit that claims 18 and 30, and claims depending thereon, are patentable over Suda under 35 U.S.C. 102(b) or 103(a).

Langdon discloses a capillary laminate material including first and second sheets spaced apart from one another by "spacers". Langdon also discloses that the sheets may contain features to render the sheets pervious to fluids, e.g. apertures, porous mediums, etc. However, Langdon fails to disclose or suggest that at least a portion of such features should extend beyond, i.e. project from, the surfaces of such sheets to terminate in a plane above the surface of the sheet surface. Accordingly, Applicants respectfully submit that claims 18 and 30, and claims depending thereon, are patentable over Langdon under 35 U.S.C. 102(b) or 103(a).

Applicants further submit that the combination of Suda and Langdon fail to disclose a two layer structure that includes both a first fluid permeable layer and second fluid permeable layer as claimed by Applicants, or absorbent articles utilizing such two structures in combination with an absorbent core. Accordingly Applicants respectfully submit that claims 18 and 30, and claims depending thereon, are patentable under 35 U.S.C. 103(a) over Suda in view of Langdon.

The Examiner has provisionally rejected claims 1-3, 6-8, and 10-17 of the instant application in light of claims 1, 3-4, 10, 11, 14-16, 18-19, 22-27 and 29-31 of copending application Serial No. 10/366,051. To the extent the provisional rejection applies to the amended claims, because such provisional rejections should be the only rejections remaining in view of the above-

mentioned Amendment and remarks herein, Applicants submit such rejections should be withdrawn pursuant to MPEP 804(I)(B), and the instant claims allowed. Should any of the above applications issue into a patent prior to allowance of the instant application, the Examiner is requested to contact the undersigned to allow applicants to consider filing a Terminal Disclaimer, or otherwise overcome any resulting non-provisional double patenting rejection.

Applicant believes that the foregoing presents a full and complete response to the outstanding Office Action. Applicant looks forward to an early notice of allowance for this application.

Respectfully submitted,

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